

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TERI P. VILLAFANA,

Plaintiff,

v.

T-MOBILE, et al.,

Defendants.

Case No.: 2:21-cv-00661-GMN-DJA

ORDER

Pursuant to 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*. (ECF No. 1). Plaintiff also submitted a complaint. (ECF No. 1-1).

I. In Forma Pauperis Application

Plaintiff filed the affidavit required by § 1915(a). (ECF No. 1). Plaintiff has shown an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Clerk's Office is further **INSTRUCTED** to file the complaint on the docket. The Court will now review Plaintiff's complaint.

II. Screening the Complaint

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the

1 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
2 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
3 F.3d 1103, 1106 (9th Cir. 1995).

4 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
5 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
6 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723
7 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
8 showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*,
9 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it
10 demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause
11 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265,
12 286 (1986)). The court must accept as true all well-pled factual allegations contained in the
13 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.
14 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do
15 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from
16 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
17 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted
18 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
19 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

20 In this case, Plaintiff attempts to bring claims under Title VII of the Civil Rights Act of
21 1964 and Nevada law. *See* Compl. (ECF No. 1-1). The Court will address the sufficiency of those
22 claims below.

23 A. Title VII

24 Plaintiff alleges she was subjected to race discrimination and retaliation under Title VII.
25 To sufficiently allege a prima facie case of discrimination in violation of Title VII to survive a §
26 1915 screening, Plaintiff must allege that: (1) she is a member of a protected class; (2) she was
27 performing according to the Company’s legitimate expectations; (3) she suffered an adverse
28 employment action; and (4) similarly situated individuals outside of her protected class were

1 treated more favorably. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); *see also*
 2 *Leong v. Potter*, 347 F.3d 1117, 1124 (9th Cir. 2003); *Gardner v. LKM Healthcare, LLC*, 2012
 3 U.S. Dist. LEXIS 111415 (D. Nev. July 27, 2012).

4 In order to make out a *prima facie* case of retaliation, Plaintiff must show: (1) involvement
 5 in a protected activity, (2) a “materially adverse” action, and (3) a causal link between the two.
 6 *Brooks v. City of San Mateo*, 229 F.3d 917, 928 (9th Cir. 2000) (citing *Payne v. Norwest Corp.*,
 7 113 F.3d 1079, 1080 (9th Cir. 1997)); *see also, Burlington Northern & Santa Fe Rwy. Co. v. White*,
 8 458 U.S. 53, 68 (2006) (setting forth the “materially adverse” standard). To prove causation,
 9 Plaintiff “must show by a preponderance of the evidence that engaging in the protected activity
 10 was one of the reasons for the ‘adverse employment decision and that but for such activity’ the
 11 adverse employment action would not have occurred.” *See Villiarimo v. Aloha Island Air, Inc.*,
 12 281 F.3d 1054, 1064-65 (9th Cir. 2002).

13 To her Complaint, Plaintiff attaches her charge dated January 13, 2020 and the dismissal
 14 and right to sue issued by the EEOC on January 11, 2021. The Court may take judicial notice of
 15 these documents. *See, e.g., Van Buskirk v. CNN*, 284 F.3d 977, 980 (9th Cir. 2002); *Mack v. South*
 16 *Bay Beer Distribs.*, 798 F.2d 1279, 1282 (9th Cir. 1986) (finding that “court[s] may take judicial
 17 notice of ‘records and reports of administrative bodies’ ”), *overruled on other grounds by Astoria*
 18 *Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104 (1991); *Mazzorana v. Emergency Physicians*
 19 *Med. Grp., Inc.*, 2:12-cv-01837-JCM-PAL; 2013 WL 4040791, at *5 n.3 (D. Nev. Aug. 6, 2013)
 20 (taking judicial notice of EEOC proceedings and documents submitted therein). As a result, the
 21 Court finds that Plaintiff timely filed this action and exhausted her administrative remedies with
 22 respect to her race and retaliation claims.

23 However, she also indicated on her complaint that she believes that she was discriminated
 24 against based on her religion (Rastafarian) and disability (PTSD and anxiety), but no mention of
 25 such categories is made on her inquiry form or charge. The Court cannot consider incidents of
 26 discrimination not included in an EEOC charge “unless the new claims are like or reasonably
 27 related to the allegations contained in the EEOC charge.” *Lyons v. England*, 307 F.3d 1092, 1104
 28 (9th Cir. 2002) (quotation omitted). A claim is like or reasonably related to allegations in an EEOC

1 charge if the claims “fell within the scope of the EEOC’s actual investigation or an EEOC
2 investigation which can reasonably be expected to grow out of the charge of discrimination.” *Id.*
3 To make this determination, the Court considers factors such as “the alleged basis of the
4 discrimination, dates of discriminatory acts specified within the charge, perpetrators of
5 discrimination named in the charge, and any locations at which discrimination is alleged to have
6 occurred.” *Freeman v. Oakland Unified Sch. Dist.*, 291 F.3d 632, 636 (9th Cir. 2002) (quotation
7 omitted). Here, the Court is not certain whether her religion and disability claims were within the
8 scope of the EEOC’s investigation to find that they were administratively exhausted. However,
9 given that she is proceeding pro se, the Court will permit her to survive screening at this point.

10 Additionally, she names individual defendants, which is not permitted under Title VII. *See*
11 *Miller v. Maxwell’s Intern. Inc.*, 991 F.2d 583 (9th Cir. 1993) (“[I]ndividual defendants cannot be
12 held liable for damages under Title VII”). Rather, Plaintiff may only bring suit against her
13 employer, who may be found liable for the actions of its employees under the respondeat superior
14 theory of liability. As such, it is not clear that Plaintiff has a cognizable claim against the individual
15 defendants. However, the Court will permit her complaint to survive screening at this point and
16 she may attempt to cure these deficiencies, if she can, with an amended complaint.

17 **III. Conclusion**

18 Accordingly, **IT IS ORDERED** that:

- 19 1. Plaintiff’s request to proceed *in forma pauperis* is **GRANTED**. Plaintiff shall not be
20 required to pre-pay the filing fee of four hundred and two dollars (\$402.00). Plaintiff
21 is permitted to maintain this action to conclusion without the necessity of prepayment
22 of any additional fees or costs or the giving of a security therefor. This order granting
23 leave to proceed *in forma pauperis* shall not extend to the issuance and/or service of
24 subpoenas at government expense.
- 25 2. The Clerk’s Office is **INSTRUCTED** to file Plaintiff’s complaint (ECF No. 1-1) on
26 the docket.

- 1 3. The Clerk of the Court shall issue Summons to Defendants and deliver the same to the
2 U.S. Marshal for service. The Clerk of the Court shall also deliver a copy of the
3 complaint (ECF No. 1-1) to the U.S. Marshal for service.
- 4 4. Plaintiff shall have twenty days in which to furnish the U.S. Marshal with the required
5 Form USM-285.¹ Within twenty days after receiving from the U.S. Marshal a copy of
6 the Form USM-285, showing whether service has been accomplished, Plaintiff must
7 file a notice with the court identifying whether defendants were served. If Plaintiff
8 wishes to have service again attempted on an unserved defendant, a motion must be
9 filed with the Court identifying the unserved defendant and specifying a more detailed
10 name and/or address for said defendant, or whether some other manner of service
11 should be attempted.
- 12 5. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, service must be
13 accomplished within 90 days from the date this order is entered.
- 14 6. From this point forward, Plaintiff shall serve upon Defendants, or, if appearance has
15 been entered by counsel, upon the attorney(s), a copy of every pleading, motion, or
16 other document submitted for consideration by the court. Plaintiff shall include with
17 the original papers submitted for filing a certificate stating the date that a true and
18 correct copy of the document was mailed to Defendants or counsel for Defendants. The
19 Court may disregard any paper received by a District Judge or Magistrate Judge that
20 has not been filed with the Clerk, and any paper received by a District Judge, Magistrate
21 Judge, or the Clerk that fails to include a certificate of service.

22
23 Dated: April 26, 2021

24 
25 DANIEL J. ALBREGTS
26 UNITED STATES MAGISTRATE JUDGE
27

28 ¹ The USM-285 form is available at www.usmarshals.gov/process/usm285.pdf.